

### REMARKS

The foregoing amendments and the following remarks are responsive to the October 10, 2007 non-final *Office Action*. Claims 1-3, 6-15, and 17-36 were considered and rejected by the Examiner.

#### Rejection Under 35 U.S.C. § 103 (a) over Katou and Weiler

Obviousness is a question of law based on underlying factual inquiries set forth in *Graham v. John Deere*: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. Objective evidence of non-obviousness must be also considered. In assessing the differences between the claim and the cited references, every feature of the claim must be disclosed or suggested in the cited references or known to one skilled in the art in making a *prima facie* case of obviousness.

In paragraph 3 of the Office action, the Examiner rejected Claims 1, 6-13, 18-22, 26-31, 35 and 36 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,214,282 to Katou et al. ("Katou") in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 4,675,070 to Pasternicki and U.S. Patent No. 6,698,160 to Peronek et al. ("Peronek"). Applicants respectfully traverse the Examiner's rejection of these claims.

In paragraph 4 of the Office action, the Examiner rejected Claims 2, 3, 23, and 24 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,214,282 to Katou et al. ("Katou") in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 4,675,070 to Pasternicki and U.S. Patent No. 6,698,160 to Peronek et al. ("Peronek"), as applied to Claim 1 and further in view of U.S. Patent No. 3,818,785 to Wakabayshi. Applicants respectfully traverse the Examiner's rejection of these claims.

In paragraph 5 of the Office action, the Examiner rejected Claims 10, 17, and 18 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,214,282 to Katou et al. ("Katou") in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 5,049,349 to McCullough. Applicants respectfully traverse the Examiner's rejection of these claims.

Thus, the Examiner has rejected independent Claims 1, 10, and 22 over the primary reference Katou in view Weiler and in view of other secondary references under 35 U.S.C. §

103(a). For the reasons set forth below, Applicants disagree with the Examiner's characterization of Katou and Weiler and believe that both of these primary references fail to teach or suggest elements recited in Claims 1, 10, and 22. Therefore, Applicants believe that the Examiner has failed to state a *prima facie* case of obviousness of these claims.

The Examiner cited Katou as teaching "a process and apparatus for manufacturing a [sealed plastic or foil container] comprising: grasping a neck portion of a preform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) the preform into a pouch, filling the pouch with a product (figure 13d), closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer." Applicants disagree with the Examiner's assessment of this reference.

Katou fails to teach or suggest a method or an apparatus which handles preforms. The cited portions of Katou teach forming a parison into a bottle. Therefore, Katou fails to teach or suggest the "preform" element of claims 1, 10, and 22.

Moreover, Katou fails to describe a method or an apparatus which handles the neck portion of the preform throughout the process of manufacturing and filling. Figure 13c shows a transition of the neck to a larger diameter as the filling nozzle 36 is inserted into the mold body. Such expansion means that the neck portion is not in contact with the mold body during the formation of the bottle. Thus, Katou fails to teach or suggest that the control of "neck portion" is maintained throughout the process of forming as is recited in claims 1, 10, and 22.

While Katou discloses molded articles in general, Katou does not disclose or suggest a method of producing flexible pouches having an average side wall thickness of between about 0.003 to about 0.010 inches. For this limitation, the Examiner cited Weiler, col. 10, lines 45-50. Applicants disagree with the Examiner's characterization of this disclosure of Weiler.

Weiler teaches that hermetically sealed containers may be made with a reduced thickness portion called a frangible web. The frangible web may be ruptured or severed which opens the container and exposes the contents. Referring to Figure 1, the frangible web 64 is the portion that connects the top portion 58 and the bottom portion 56 of the container. Specifically, Weiler discloses that "the frangible web [of the molded article] has a thickness of about 0.005 inch to

about 0.001 whereas the thickness of the wall above and below the web is about 0.025 inch to about 0.03 inch.

In contrast to Weiler, Applicant's claims 1, 10, and 22 recite that the pouch has an average sidewall thickness of between about 0.003 to about 0.010 inches. Since Weiler teaches that only a small portion of the container has a thickness of 0.010 inches, a portion which is meant to be ruptured to open the container, Weiler fails to teach a pouch having an average sidewall thickness of between about 0.003 to about 0.010 inches.

Moreover, Weiler fails to teach or suggest the additional elements mentioned above with respect to Katou. Thus, both Weiler and Katou fail to teach or suggest a number of elements recited in Claims 1, 10, and 22, and thus the Examiner has fails to establish a prima facie case of obviousness of these claims.

Applicants also believe that Katou teaches away from Weiler. Katou teaches forming parisons into containers having screwthread neck portions which may receive a screw cap. In contrast, Weiler teaches that a frangible web may be ruptured, and thus not resealable. Thus, a person having ordinary skill in the art would not combine Katou, a reference that teaches that a container capable of receiving a removable screw cap, and Weiler, a reference that teaches rupturing a top portion.

None of the secondary references including Peronek and Pasternicki account for the above-mentioned deficiencies of the primary references, Katou and Weiler. Moreover, the secondary references are not properly combinable with the references state above for similar reasons. Thus, claims 1, 10, and 22 are also patentably distinguishable from the primary references.

Because the combination of the references does not disclose or suggest every feature of Claims 1, 10, and 22 , these claims are patentably distinguishable from the cited references. Claims 2-3, 6-9, 14-15, 17-21, 23-24, 26-30 are dependent on Claims 1, 10, or 22, and are patentably distinguishable from the cited references, at least for the reasons stated above, as well as for other novel and nonobvious features recited therein.

**Rejection Under 35 U.S.C. § 103 (a) over Yoneyama and Weiler**

In paragraph 6 of the Office action, the Examiner rejected Claims 30-33 and 35 under 35 U.S.C. § 103(a) as obvious over U.S. Patent Application Publication No. 2003/0059130 to Yoneyama et al. in view of U.S. Patent No. 4,671,763 to Weiler.

In paragraph 7 of the Office action, the Examiner rejected Claim 34 under 35 U.S.C. § 103(a) as obvious over Yoneyama et al. in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 6,827,237 to Yorn.

Applicants disagree with the Examiner that the U.S. Yoneyama publication is prior art to the present application. Yoneyama published on March 27, 2003, and is a national phase application of PCT/JP01/02357. The present application has a priority date of December 27, 2002. The U.S. Yoneyama publication is only prior art under 35 U.S.C. 102(e) if the PCT application designated the United States and was published in English. Since the PCT application is published in Japanese and not English, the U.S. Yoneyama publication does not qualify as 102(e) art.

Even if the PCT publication were considered prior art under a different section of 35 U.S.C. 102, Applicant believes that the Yoneyama reference is patentably distinguishable from amended Claim 31, as Claim 31 recites features not taught or suggested by the Yoneyama reference nor the secondary references. For example, Claim 31 teaches "maintaining positive control of a preform through a neck portion through blow molding and filing processes."

Moreover, as noted above, Weiler does not teach flexible pouches having an average sidewall thickness between about 0.003 to about 0.010 inches, as recited in Claim 31.

Since Yoneyama and Weiler fail to teach or suggest these elements, Claim 31 is patentably distinguishable from the cited references. Claims 32-36 are dependent on Claim 31, at least for the reason stated above, as well as for other novel and nonobvious features recited therein.

**No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather,

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any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

### Conclusion


Applicants submit that all of the Examiner's rejections have been addressed and overcome, and that all claims are allowable over the art of record. Applicants have submitted amendments and arguments believed to be sufficient to overcome all of the outstanding rejections. Consequently, Applicants have not advanced every argument for the allowability of the claims over the references of record. As such, Applicants do not acquiesce to any of the Examiner's statements or characterizations not specifically traversed. Should the Examiner believe that any outstanding issues are resolvable in an Examiner's Amendment, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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